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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

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Date: **OCT 19 2011** Office: NEBRASKA SERVICE CENTER

IN RE: Petitioner:  
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the preference visa petition, and the appeal is now before the Administrative Appeals Office (AAO). The appeal will be rejected.

The petitioner is an architecture business. It seeks to employ the beneficiary permanently in the United States as an architectural designer pursuant to section 203(b)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly.

In pertinent part, section 203(b)(2)(A) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. The petitioner did not seek a waiver of the job offer pursuant to section 203(b)(2)(B) of the Act and did not seek Schedule A Group I or II designation pursuant to 20 C.F.R. § 656.15. Thus, pursuant to 8 C.F.R. § 204.5(k)(4), the petitioner needed to have included an alien employment certification that the Department of Labor (DOL) approved. The petitioner did submit a DOL approved ETA Form 9089, Application for Permanent Employment Certification, filed online with DOL on November 9, 2006. Neither the petitioner nor the beneficiary, however, signed the ETA Form 9089.

The director noted in his September 17, 2007 Request for Additional Evidence (RFE) that the petitioner had failed to sign Parts L, M, and N of the ETA Form 9089 and exercised his discretion to request the submission of those signatures. In the petitioner's October 26, 2007 response to the RFE, the petitioner submitted a photocopy of those three parts of the alien employment certification with the respective signatures of the petitioner, the beneficiary, and prior counsel. The photocopied pages of the ETA Form 9089 did not contain the original signatures. The director's March 28, 2009 decision did not discuss the petitioner's failure to submit original signatures on the alien employment certification. Instead, the director issued a decision on the merits. The AAO is not bound by prior errors. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

The regulation at 20 C.F.R. § 656.17(a)(1) states that an employer who desires to apply for an alien employment certification on behalf of an alien must file a completed ETA Form 9089. The regulation further states that where the employer files the ETA Form 9089 electronically, all parties must sign any resulting certification immediately upon receipt from the DOL before submitting the certification to USCIS for processing. This language also appears on the ETA Form 9089. The regulation at 20 C.F.R. § 656.17(a)(1) concludes: "DHS will not process petitions unless they are supported by an original certified ETA Form 9089 that has been signed by the employer, alien, attorney and/or agent." The petitioner did not comply with this regulation. As the petitioner did not submit a signed copy of the alien employment certification to USCIS, the petition was not properly filed. Without a properly filed underlying petition, there is no matter to consider on appeal.

Accordingly, the AAO must reject the appeal.

**ORDER:** The appeal is rejected.